

Under Rule 41(b) of the Federal Rules of Civil Procedure, a case may be dismissed upon a

determination of a "clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). Litigants proceeding *pro se* are not exempted from this requirement of diligent prosecution. Moon v. Newsome, 863 F.2d 835 (11th Cir. 1989). The court's inherent power to dismiss cases in which the plaintiff has failed to diligently prosecute his action "is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts." Link v. Wabash R.R., 370 U.S. 626, 630 (1962).

A review of this entire action does not reveal a clear record of delay or willful contempt on the part of the plaintiff. Although the plaintiff ceased communicating with the court between December 2005 and July 2006, he has since filed numerous motions and pleadings in an effort to have this action proceed. The plaintiff also states that several portions of his legal papers have been confiscated during his periods of incarceration, and that his mail service has been interrupted due to his movement back into incarceration. In light of the plaintiff's *pro se* status and his attempts to correspond with the court during the last six (6) months, it is the recommendation of the undersigned that the defendants' motions to dismiss be **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

**SO RECOMMENDED**, this 11<sup>th</sup> day of December, 2006.

/s/ **Richard L. Hodge**  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE

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